

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 410

Citations Affected: IC 5-10.2-2-2.5; IC 5-10.2-2-18; IC 5-10.3-5-3; IC 21-6.1-3-9.

Synopsis: Public pension funds. Conference committee report for ESB 410. Requires the public employees' retirement fund (PERF) and the teachers' retirement fund (TRF) to apply for a grant from a private foundation or other entity to develop a fellowship program to assist PERF and TRF in increasing venture capital investment opportunities in Indiana technology and advanced manufacturing companies. Strongly encourages the establishment for a ten year period of goals for investment in Indiana for a public pension fund if its board decides to allocate part of the fund's assets to privately held equity or debt asset investments. Allows the board five years to achieve the goals. Does not require the board to achieve the goal percentages if, in the exercise of financial and fiduciary prudence, the board determines that sufficient appropriate investments are not available in Indiana. **(This conference committee report adds language concerning pension fund investment goals and removes language allowing a teachers' retirement fund member to assign benefits to pay for a retired membership in an association that has as members at least 50% of the active members of the fund.)**

Effective: July 1, 2003.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 410 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 5-10.2-2-2.5, AS AMENDED BY P.L.61-2002,
- 3 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2003]: Sec. 2.5. (a) Each board may establish investment
- 5 guidelines and limits on all types of investments (including, but not
- 6 limited to, stocks and bonds) and take other actions necessary to fulfill
- 7 its duty as a fiduciary for all assets under its control, subject to the
- 8 limitations and restrictions set forth in **section 18 of this chapter,**
- 9 IC 5-10.3-5-3, and IC 21-6.1-3-9.
- 10 (b) Each board may commingle or pool assets with the assets of any
- 11 other persons or entities. This authority includes, but is not limited to,
- 12 the power to invest in commingled or pooled funds, partnerships, or
- 13 mortgage pools. In the event of any such investment, the board shall
- 14 keep separate detailed records of the assets invested. Any decision to
- 15 commingle or pool assets is subject to the limitations and restrictions
- 16 set forth in IC 5-10.3-5-3 and IC 21-6.1-3-9.
- 17 SECTION 2. IC 5-10.2-2-18 IS ADDED TO THE INDIANA CODE
- 18 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
- 19 1, 2003]: **Sec. 18. (a) As used in this section, "high growth**
- 20 **company" means a sole proprietorship, firm, corporation,**
- 21 **partnership, limited liability company, limited liability**

partnership, joint venture, trust, syndicate, or other business unit or association that:

(1) is primarily focused on commercialization of research and development, technology transfers, or the application of new technology or is determined by the department of commerce to have significant potential to:

(A) bring substantial capital into Indiana;

(B) create jobs;

(C) diversify the business base of Indiana; or

(D) significantly promote the purposes of this chapter in any other way;

(2) has had an average annual net worth of less than twenty million dollars (\$20,000,000) in each of the last two (2) calendar years; and

(3) is not engaged in a business involving:

(A) real estate;

(B) real estate development;

(C) insurance;

(D) professional services provided by an accountant, a lawyer, or a physician;

(E) retail sales, except when the primary purpose of the business is the development or support of electronic commerce using the Internet; or

(F) gas and oil exploration.

A company that meets the definition of a high growth company under this subsection shall be considered to meet the definition even if affiliated with one (1) or more other companies that do not meet the definition and regardless of whether any of the affiliated companies is engaged in a business involving the matters described in subdivision (3).

(b) As used in this section, "Indiana high growth company" means a high growth company as defined in subsection (a) that:

(1) has its headquarters in Indiana; and

(2) has:

(A) at least fifty percent (50%) of its employees residing in Indiana; or

(B) at least seventy-five percent (75%) of its assets located in Indiana.

(c) If the board decides to allocate part of the fund assets to funds investing in high growth companies, the board is strongly encouraged to establish the following:

(1) A goal for investment in funds investing in Indiana high growth companies of at least twenty-five percent (25%) of the amount allocated to funds investing in high growth companies.

(2) A preference for investments described in subdivision (1) that are started in or assisted by Indiana universities and colleges.

(d) The board has five (5) years after the date the goals in subsection (c) are adopted to achieve the goal percentages.

(e) The board is not required to achieve the goal percentages under subsection (c) if the board, exercising financial and fiduciary

prudence, determines that sufficient appropriate investments in privately held equity or debt assets are not available in Indiana.

(f) This section expires July 1, 2013.

SECTION 3. IC 5-10.3-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) The board shall invest its assets with the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims. The board shall also diversify such investments in accordance with prudent investment standards, **subject to the limitations and restrictions set forth in IC 5-10.2-2-18.**

(b) The board may invest up to five percent (5%) of the excess of its cash working balance in debentures of the corporation for innovation development subject to IC 30-4-3-3.

(c) The board is not subject to IC 4-13, IC 4-13.6, and IC 5-16 when managing real property as an investment. Any management agreements entered into by the board must ensure that the management agent acts in a prudent manner with regard to the purchase of goods and services. Contracts for the management of investment property shall be submitted to the governor, the attorney general, and the budget agency for approval. A contract for management of real property as an investment:

(1) may not exceed a four (4) year term and must be based upon guidelines established by the board;

(2) may provide that the property manager may collect rent and make disbursements for routine operating expenses such as utilities, cleaning, maintenance, and minor tenant finish needs;

(3) must establish, consistent with the board's duty under IC 30-4-3-3(c), guidelines for the prudent management of expenditures related to routine operation and capital improvements; and

(4) may provide specific guidelines for the board to purchase new properties, contract for the construction or repair of properties, and lease or sell properties without individual transactions requiring the approval of the governor, the attorney general, the Indiana department of administration, and the budget agency. However, each individual contract involving the purchase or sale of real property is subject to review and approval by the attorney general at the specific request of the attorney general.

(d) Whenever the board takes bids in managing or selling real property, the board shall require a bid submitted by a trust (as defined in IC 30-4-1-1(a)) to identify all of the following:

(1) Each beneficiary of the trust.

(2) Each settlor empowered to revoke or modify the trust.

SECTION 4. IC 21-6.1-3-9, AS AMENDED BY P.L.1-2002, SECTION 88, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The board shall invest its assets with the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims. The board shall also diversify such investments in accordance with prudent investment

standards, **subject to the limitations and restrictions set forth in IC 5-10.2-2-18.**

(b) The board may:

- (1) make or have made investigations concerning investments; and
- (2) contract for and employ investment counsel to advise and assist in the purchase and sale of securities.

(c) The board is not subject to IC 4-13, IC 4-13.6, or IC 5-16 when managing real property as an investment. Any management agreements entered into by the board must ensure that the management agent acts in a prudent manner with regard to the purchase of goods and services. Contracts for the management of investment property shall be submitted to the governor, the attorney general, and the budget agency for approval. A contract for the management of real property as an investment:

- (1) may not exceed a four (4) year term and must be based upon guidelines established by the board;
- (2) may provide that the property manager may collect rent and make disbursements for routine operating expenses such as utilities, cleaning, maintenance, and minor tenant finish needs;
- (3) shall establish, consistent with the board's duty under IC 30-4-3-3(c), guidelines for the prudent management of expenditures related to routine operation and capital improvements; and
- (4) may provide specific guidelines for the board to purchase new properties, contract for the construction or repair of properties, and lease or sell properties without individual transactions requiring the approval of the governor, the attorney general, the Indiana department of administration, and the budget agency. However, each individual contract involving the purchase or sale of real property is subject to review and approval by the attorney general at the specific request of the attorney general.

(d) Whenever the board takes bids in managing or selling real property, the board shall require a bid submitted by a trust (as defined in IC 30-4-1-1(a)) to identify all of the following:

- (1) Each beneficiary of the trust.
- (2) Each settlor empowered to revoke or modify the trust.

SECTION 5. [EFFECTIVE JULY 1, 2003] IC 5-10.2-2-18, as added by this act, applies only to investments made after June 30, 2003.

SECTION 6. [EFFECTIVE JULY 1, 2003] (a) For purposes of this SECTION, "boards" refers to the board of trustees of the Indiana state teachers' retirement fund and the board of trustees of the public employees' retirement fund.

(b) In order to seek and enhance investment opportunities under IC 5-10.2-2-2.5, IC 5-10.3-5-3, and IC 21-6.1-3-9, all as amended by this act, the boards shall seek funding from:

- (1) a private foundation;**
- (2) the federal government;**
- (3) an institution of higher education; or**
- (4) any other entity;**

to develop a fellowship program to work with the Indiana future fund to enhance venture capital investment opportunities in

1 **Indiana technology and advanced manufacturing companies.**

2 **(c) The investment opportunities must be designed to enhance**
3 **investment in companies in Indiana and must be designed to:**

- 4 **(1) enhance the venture capital community;**
5 **(2) train future venture capitalists; and**
6 **(3) support the development of high potential, startup, and**
7 **early stage companies in the areas of technology and advanced**
8 **manufacturing.**

9 **(d) The fellowship program must be designed to last for two (2)**
10 **years.**

11 **(e) An applicant for the fellowship must:**

- 12 **(1) be a resident of Indiana;**
13 **(2) hold a graduate degree, preferably with a business or**
14 **technical major; and**
15 **(3) have at least three (3) years of practical experience.**

16 **(f) The department of commerce shall assist the boards in**
17 **developing and administering the grant. The boards shall create a**
18 **committee, including:**

- 19 **(1) one (1) individual appointed by the board of trustees of the**
20 **public employees' retirement fund;**
21 **(2) one (1) individual appointed by the teachers' retirement**
22 **fund; and**
23 **(3) three (3) individuals appointed by the department of**
24 **commerce.**

25 **(g) The committee established in subsection (f) shall:**

- 26 **(1) review the grant application before it is submitted;**
27 **(2) review applicants for the fellowship program; and**
28 **(3) set the stipend for participants in the program.**

29 **(h) This SECTION expires July 1, 2007.**

(Reference is to ESB 410 as reprinted April 10, 2003.)

Conference Committee Report
on
Engrossed Senate Bill 410

Signed by:

Senator Ford
Chairperson

Representative Hasler

Senator Simpson

Representative Turner

Senate Conferees

House Conferees